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Before the
FEDERAL COMMUNICATIONS COMMISSIONS
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Federal-State Joint Board)
on Universal Service)

CC Docket No. 96-45

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COMMENTS OF COMSAT CORPORATION

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SUMMARY

A threshold issue for the Federal-State Joint Board in this rulemaking, as specified in the Notice, is to "identify which service providers fall within the scope of the term 'telecommunications carrier[s] that provide[] interstate telecommunications services.'" Notice at ¶119. This identification is required by Section 254(d) of the Telecom Act of 1996, for it is those classes of carriers and service providers that are required to contribute to the universal service support mechanisms ultimately adopted in this proceeding.

COMSAT believes that satellite technology, due to its distance-insensitive nature, is unique in its ability to meet the Congressional objectives of providing basic and advanced telecommunications between all areas of the United States on a cost effective basis. Unfortunately, COMSAT is barred by current FCC policies from using INTELSAT and Inmarsat space segment capacity to provide domestic interstate communications services. COMSAT therefore does not currently fall within the scope of carriers and providers able to offer universal services or otherwise participate in the program. However, as soon as COMSAT

is authorized by the FCC to provide domestic interstate services, it stands ready, willing and able to contribute to the universal service support mechanisms adopted in this rulemaking.

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

COMSAT Corporation, through its COMSAT International Communications division ("COMSAT"),¹ hereby submits its comments on the Federal Communications Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding. As stated in the Notice, this rulemaking has been instituted in part to "identify which service providers fall within the scope of the term 'telecommunications carrier[s] that provide[] interstate telecommunications services.'"² Such identification is necessary to implement the universal support mechanisms required by Section

² Notice at ¶119.

254 of the Communications Act, as added by the Telecommunications Act of 1996.³

COMSAT supports the universal service goals enunciated in the Notice and agrees that all telecommunications carriers and providers able to offer their services in the United States should be required to participate in this program. As a U.S. common carrier created by an Act of Congress,⁴ and whose ownership consists almost entirely of U.S. shareholders, COMSAT is extremely desirous of bringing U.S. domestic consumers the benefits of satellite communications in fulfillment of the universal service objectives of the Telecom Act. Unfortunately, under current FCC policies, COMSAT is largely precluded from serving the U.S. domestic market using space segment capacity it obtains from INTELSAT and Inmarsat.⁵

³ Telecommunications Act of 1996, Pub. L. No. 1040-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et seq.) ("Telecom Act").

⁴ See 47 U.S.C. §§701-757 (1991) ("Satellite Act").

⁵ Curiously, the Commission recently authorized separate U.S. international satellite systems (many with substantial foreign ownership levels) to serve the U.S. domestic market, leaving to another day a decision as to COMSAT's participation through INTELSAT and Inmarsat in providing U.S. domestic satellite services. See Amendment to the Commission's Regulatory

What this means, of course, is that unlike all other telecommunications carriers and providers serving the U.S. market, COMSAT cannot develop a domestic interstate telecommunications business and, therefore, currently has no interstate revenues from which to make universal service contributions. Accordingly, as discussed below, COMSAT submits that, until such time as it is authorized to serve the U.S. market, it does not fall within the scope of Section 254(d) of the Telecom Act.⁶ COMSAT nevertheless commits to contribute the required portion of its interstate revenues to the universal service support mechanisms adopted in this proceeding as soon as it is authorized by the FCC to provide domestic interstate services to U.S. consumers.

Policies Governing Domestic Fixed Satellite and Separate International Satellite Systems, IB Docket No. 95-41 (Jan. 22, 1996), summary published 61 Fed. Reg 9946 (Mar. 12, 1996) ("DISCO-I").

⁶ Section 254(d) requires that "[e]very telecommunications carrier that provides interstate telecommunications services" contribute to support universal service and that "[a]ny other provider of interstate communications may be required to contribute . . . to universal service if the public interest so requires." 47 U.S.C. §254(d) (emphasis added). As explained below, COMSAT does not fall within the scope of either the mandatory carrier or permissive provider categories of entities that offer interstate services.

BACKGROUND

To fully understand why COMSAT does not "fall within the scope of the term 'telecommunications carrier[s] that provide[] interstate telecommunications services,'" a brief description of COMSAT's INTELSAT and Inmarsat operations is a necessary starting point for analysis. Once described, it is evident that COMSAT is not engaged in a U.S. domestic interstate telecommunications business, as contemplated by Section 254 of the Telecom Act.

A. DESCRIPTION OF COMSAT OPERATIONS

As the U. S. Signatory to INTELSAT,⁸ CWS provides space segment capacity to U.S. common carriers and other authorized users upon request.⁹ CWS acts as a wholesaler of INTELSAT

⁷ Notice at ¶119.

⁸ INTELSAT is an inter-governmental organization created by treaty (see Agreements Relating to the International Telecommunications Satellite Organization, Aug. 20, 1971, 23 U.S.T. 3813), and which now consists of 137 member countries that jointly own and operate the global INTELSAT satellite system. The INTELSAT system is comprised of INTELSAT-owned satellites and the tracking, telemetry, command and related facilities and equipment necessary to support the operation of those satellites. COMSAT has a 19.1 percent ownership interest in INTELSAT based upon its utilization of the system.

capacity, leasing international satellite half-circuits to entities who then reoffer those circuits to the public for transmission of international voice, data or video communications.

CWS does not own or operate any of the U.S. domestic earth station facilities that are necessary for its customers to access the INTELSAT system. Those earth stations are owned and operated by CWS's carrier, television broadcast, or satellite teleport customers. The U.S. earth station operator then passes the satellite signal to (or receives the signal from) carriers and service providers using non-COMSAT interstate terrestrial links, such as microwave radio, fiber optic cable, or domestic satellite, for transmission to the end user. Thus, there is neither a domestic component nor a source of interstate revenue attributable to COMSAT's current provision of INTELSAT services.

⁹ Specifically, the Satellite Act provides that COMSAT shall "furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic." 47 U.S.C. §735(a)(2).

Similarly, as the U.S. Signatory to Inmarsat,¹⁰ CMC offers space segment capacity for the provision of maritime, aeronautical and land mobile communications services. Unlike the INTELSAT operations, however, CMC is authorized by the Inmarsat Act to own U.S. land earth stations for the limited purpose of collecting and assembling international traffic carried over other carriers' domestic and international common carrier networks for transmission to mobile terminals operating on ships, airlines or elsewhere, and for the delivery of other carriers traffic from mobile terminals located outside of North America.¹¹ Indeed, under the Inmarsat Act, COMSAT is prohibited from having any ownership interest in a domestic interstate common carrier interconnecting with its Inmarsat land earth stations.¹²

¹⁰ Inmarsat is an inter-governmental organization created by treaty (see Convention on the International Mobile Satellite Organization (Inmarsat) Sept. 3, 1976, 31 U.S.T. 1) and which now consists of 79 member countries that jointly own and operate the global Inmarsat satellite systems. COMSAT has a 24 percent ownership interest in Inmarsat based upon its utilization of the system.

¹¹ 47 U.S.C. §752(6)(1). COMSAT has U.S. LESSs located at Southbury, Connecticut, and Santa Paula, California. At these two earth stations, traffic received from mobile terminals is switched into the non-COMSAT local and long distance telephone networks and traffic destined for mobile units is relayed to an Inmarsat satellite.

¹² 47 U.S.C. §752(b)(2).

B. FCC POLICIES BAR COMSAT FROM PROVIDING
INTERSTATE TELECOMMUNICATIONS SERVICES

As mentioned above, COMSAT is not legally precluded from providing interstate telecommunications services;¹³ to be sure, COMSAT is extremely desirous of sharing its expertise and experience in satellite communications to support the universal service objectives of the Telecom Act. However, as matter of long standing Commission policy, COMSAT is not permitted to offer telecommunications services between two locations in the United States using INTELSAT or Inmarsat satellite capacity.¹⁴

The Commission's most recent policy pronouncement limiting COMSAT's ability to provide interstate telecommunications

¹³ The Satellite Act makes clear that "it is not the intent of Congress by this [Act] to preclude the use of the [INTELSAT] communications satellite system for domestic communications services where consistent with the provisions of this [Act]." 47 U.S.C. §701(d). In fact, for the first ten years of its existence, COMSAT did provide domestic U.S. satellite services using INTELSAT space segment capacity. In an effort to foster the development of a domestic U.S. satellite industry, however, the Commission subsequently restricted COMSAT's authority to offer domestic U.S. satellite services; only case-by-case exceptions are permitted. See, e.g., COMSAT Corp., DA 96-370 (Sat. and Radiocom. Div. March 22, 1996).

¹⁴ See, e.g., AT&T et al., 52 FCC 2d 142, 149 (1975); Communications Satellite Corp., 6 FCC Rcd 2891 (1991).

services occurred just three months ago, in the so-called DISCO-I rulemaking.¹⁵ In that proceeding, the FCC generally authorized U.S. domestic satellite operators to provide international service, and allowed U.S.-licensed separate international satellite systems to provide purely domestic interstate service. However, the agency declined to grant COMSAT a corresponding right to offer domestic interstate service, pending the outcome of a yet-to-be-initiated DISCO-II rulemaking.

In February 1996, the FCC invoked this policy in granting the application of American Mobile Satellite Corporation ("AMSC") to offer international mobile satellite services in addition to its domestic U.S. operations. Responding to a COMSAT request to offer services within the U.S. to compete with AMSC, the Commission refused to modify its geographic restriction on COMSAT, stating that "prior to authorizing COMSAT to provide aeronautical and land mobile satellite services in the United States," a number of other issues had to be addressed in the DISCO-II and other proceedings.¹⁶ In short, FCC policy continues

¹⁵ See note 5 supra.

¹⁶ AMSC Subsidiary Corp., ITC-95-280 (Feb. 22, 1996). It should be noted that the Commission has granted COMSAT temporary,

to bar COMSAT from using INTELSAT and Inmarsat capacity to offer interstate telecommunications services in the United States.¹⁷

ARGUMENT

A. ABSENT FCC AUTHORITY TO PROVIDE DOMESTIC U.S. SERVICES, COMSAT DOES NOT FALL WITHIN THE SCOPE OF INTERSTATE ENTITIES REQUIRED TO MAKE UNIVERSAL SERVICE CONTRIBUTIONS.

1. The Plain Language of the Statute Makes Clear That Only Interstate Carriers Must Contribute.

By its Notice, the Commission correctly observed that Section 254 of the Telecom Act does not mandate universal service contributions from all carriers or service providers. Rather, it is circumscribed by Section 254(d) to "[e]very telecommunications

limited authorizations to provide domestic U.S. land mobile and aeronautical services via Inmarsat on an exceptions basis. See, e.g., Provision of Aeronautical Services via the Inmarsat System, 4 FCC Rcd 6072, 6090 n.26 (1989) (allowing the use by COMSAT of Inmarsat space segment domestically "during the aftermath of natural or human disasters such as earthquakes, volcano eruptions and forest fires, and where these stations are the only adequate means of meeting urgent communications requirements"). However, the FCC has made clear that when the permanent U.S. MSS system is operational, COMSAT must transition its domestic land mobile and aeronautical traffic to the new AMSC system. American Mobile Satellite Corp., 7 FCC Rcd 942 (1992), recon. granted in part, 8 FCC Rcd 6310 (1993); Aeronautical Radio, Inc., 7 FCC Rcd 1006 (1992). The AMSC system became operational in mid-1995.

¹⁷ See also Communications Satellite Corp., 8 FCC Rcd 638, 643 (1993) (COMSAT not authorized to provide land mobile-satellite services to or from mobile satellite terminals located in North America).

carrier that provides interstate telecommunications services."¹⁸

For that reason, the Notice expressly sought to identify what carriers fall within the scope of the statute and what carriers do not.

It is, of course, black letter law that if a "statute is clear and unambiguous, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."¹⁹ With regard to telecommunications carrier contributions to support the universal service mechanisms adopted by the Commission, the Congress unambiguously stated that:

"Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service Any other provider of interstate telecommunications may be required to contribute to the preservation

¹⁸ Notice at ¶118.

¹⁹ Board of Governors, FRS v. Dimension Financial Corp., 474 U.S. 361, 368 (1986) (quoting Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984)).

and advancement of universal service if the public interest so requires."²⁰

Thus, whether mandated because of carrier status or discretionary due to non-carrier (i.e. provider) status, the statute clearly makes the provision of interstate services an essential predicate of the contribution obligation.

Section 3(h) of the Communications Act defines interstate communications as essentially any transmission that originates in one State and terminates in any other State.²¹ That, of course, is precisely the type of communications that COMSAT is barred from offering its customers under current FCC policy. Accordingly, COMSAT submits that it does not fall within the scope of the universal service contribution obligation under Section 254(d) of the Telecom Act.

²⁰ 47 U.S.C. §254(d) (emphasis added).

²¹ 47 U.S.C. §153(h).

2. The Legislative History of Section 254
 Confirms That Carriers Not Authorized To
Provide U.S. Interstate Services Are Not Covered.

Beyond the plain meaning of the statute, the legislative history of Section 254 of the Telecom Act further supports the reading that Congress did not intend to require those that do not offer interstate services to contribute to the universal service support mechanisms. In this regard, it is significant that the Senate considered an amendment to S. 652 which would have required that "every telecommunications carrier engaged in . . . foreign communication shall participate"²² in the mechanisms established by the Commission to advance universal service. However, Congress did not adopt the language referring to carriers engaged in foreign communications and confined the class of contributors to those that provide interstate telecommunications services. As described by Senator Kerrey: "[w]hat we are saying is those who provide the services will contribute to the fund."²³ Conversely, those who do not provide

²² See 141 CONG. REC. S8273 (daily ed. June 13, 1995) (Amendment No. 1300 introduced by Senator Stevens).

²³ 141 CONG. REC. S.7960 (daily ed. June 8, 1995) (statement of Senator Kerrey).

such interstate services are not required to contribute to the fund.

In any case, it is important to recognize that the interexchange carriers that offer international telecommunications services to their customers using COMSAT supplied INTELSAT or Inmarsat space segment already will be contributing to the universal service support mechanisms based upon the interstate portion of their services. Thus, the purpose of the statute in capturing all interstate carriers and service providers is fully satisfied. The contribution amounts required of interstate carriers and service providers ultimately will be born by their end user subscribers. Given that, Congress did not envision having consumers pay twice for the interstate portion by imposing this requirement on carriers that do not provide interstate transmission capabilities.

B. COMSAT COMMITS TO MAKE UNIVERSAL SERVICE CONTRIBUTIONS IMMEDIATELY UPON OBTAINING AUTHORITY TO OFFER U.S. DOMESTIC SERVICES.

Because COMSAT is not able to develop an interstate telecommunications business under current FCC policy, it has no

source of interstate revenues from which to make any universal service contributions. Let there be no misunderstanding, however, regarding COMSAT's position in this proceeding. COMSAT has absolutely no intent to avoid becoming a universal service contributor.

Due to its distance-insensitive nature, satellite technology is perhaps more suited to the advancement of universal service throughout all regions of the United States, in a truly cost-effective manner, than any other transmission medium. COMSAT very much desires to participate in this Congressionally-mandated public policy goal. Thus, as soon as COMSAT is given the green light to offer satellite services between locations in the United States, it stands ready, willing and able to contribute the required portion of its interstate revenues to the universal support mechanisms adopted in this proceeding.

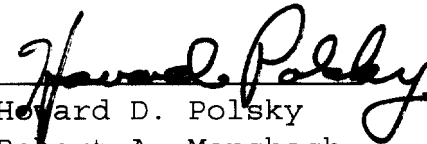
CONCLUSION

Today, COMSAT is the only U.S. carrier unable to offer its customers domestic satellite services. Until the Commission authorizes COMSAT to provide such interstate services, COMSAT

does not fall within the scope of Section 254(d) of the Telecom Act, and therefore, is not obligated at this time to contribute to the universal service support mechanisms. However, as soon as COMSAT is authorized to provide domestic interstate telecommunications services, it hereby commits to contribute its share of interstate revenues to the universal service support mechanisms as required.

Respectfully submitted,

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April 12, 1996

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I, Beverly O. Wester, hereby certify that a copy of the foregoing "COMMENTS OF COMSAT CORPORATION", was served this 12th day of April, 1996, by first-class mail, postage prepaid to the party listed below:

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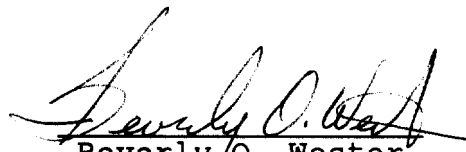
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